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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/036,288 | 10/24/2001 | Stephen C. Edberg | 14098/1013B | 3574 |

29933 7590 08/26/2002

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| EXAMINER |
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GITOMER, RALPH J

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| ART UNIT | PAPER NUMBER |
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1627

DATE MAILED: 08/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,288

Applicant(s)

Edberg

Examiner

Ralph Gitomer

Art Unit

1627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 24, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

This application is one of a series of related applications by the same inventor. Please inform the examiner as to which application first enables the presently claimed subject matter to properly select the priority date, although no priority is presently claimed. Until an appropriate priority date is determined and claimed, a full and proper search cannot be conducted.

The IDS received 4/1/02 has not been considered because the many cited references are not found in this file and are not readily available to the examiner.

Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The present claims are directed to a method employing a powdered medium lacking a gelling agent. In the specification on page 2 first full paragraph, ~~the~~ the culture medium, which may be a water solution or a water gel...~~the~~ On page 9 (1) the medium can be present in powder form. On page 11 the medium can be produced in powder form.

Please inform the examiner as to which specific previous related applications contain related statements.

Nowhere in the specification as originally filed does the culture medium lack a gelling agent. Further, that the medium lacks a gelling agent and is powdered, in view that the specification teaches the medium can be a water gel, is not seen as significant because no unexpected results of this feature is described. An undisclosed advantage is given little or no weight. And to provide a growth medium in a powdered form where water or sample is added to the powder to form a broth or gel is old in this art.

The accelerant found in many instances in the specification is essential to the claimed invention but the specification as originally filed does not provide any written description of what the accelerant may be or how it is made.

Claims 1-22 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

In claim 1(d) ~~nutrient-indicators~~ lacks definite antecedent basis.

The title of the invention is not aptly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The Abstract of the Disclosure is objected to because it is not directed to the claimed invention. Correction is required. See M.P.E.P. § 608.01(b).

5 The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

Edberg (4,925,789) with a 102(e) date of 6/30/1986, teaches methods with media that are not specifically powdered.

10 Edberg (5,429,933) with a 102(e) date of June 30, 1986, teaches a medium.

Edberg (5,780,259) with a 102(e) date of June 30, 1986, teaches a medium.

Edberg (6,329,166) with a 102(e) date of June 30, 1986, teaches a medium lacking a gelling agent.

15 Cenci (Microbiologica) dated April 1990, teaches detecting atypical coliforms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph
20 Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on (703) 308-
25 4537. The fax phone number for this Art Unit is (703) 308-4556.

Serial No. 10/036,288
Art Unit 1627

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at www.uspto.gov and click on the button Patent Electronic Business Center for more information.

Ralph Gitomer

Ralph Gitomer
Primary Examiner
Group 1627
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